



City of Seattle

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Gregory J. Nickels, Mayor

**Department of Design, Construction and Land Use**

D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

**Application Number:** 2207796

**Applicant Name:** James Jessup for Lester Eastlick

**Address of Proposal:** 2331 Fairview Avenue East (KCA #276)

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development permit for the future alteration and 155 square foot expansion to the first floor and the future 728 square foot second story addition to an existing floating home (DCLU ID #K2 and KCA #276).

The following Master Use Permit components are required:

Shoreline Substantial Development Permit – for the future addition to a floating home in an Urban Residential (UR) Shoreline Environment - (SMC 23.60.540A4)

SEPA – Environmental Determination – (Chapter 25.05 SMC)

**SEPA DETERMINATION:** ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☒ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

## **BACKGROUND DATA**

### **Existing Conditions**

The subject site is located on Lake Union in an Urban Residential (UR) shoreline environment on Fairview Avenue East south of East Louisa Street and north of East Lynn Street. The existing float area for the subject floating home measures approximately 28 feet 4 inches by 40 feet 6 inches, with a total area of 1,147.5 square feet. The zoning designation of the site is Single Family 5000 (SF 5000). The proposed work would occur on the floating home itself, which is moored in Lake Union. The subject floating home moorage is non-conforming as to the development standards set forth in Section 23.60.196C of the Seattle Municipal Code.

### **Area Development**

The floating home is three moorage slots in from Fairview Avenue East on a dock which has 15 boat slips. There are floating homes on the sites to the north and to the south.

### **Proposal**

The applicant proposes to alter and expand 155 square feet on the first floor of the floating home, and construct a 728 square foot second story addition. The height of the proposed structure meets the maximum height requirement of 18 feet. Therefore, neither the existing float, nor the current footprint of the structure will be increased outside the boundary of the existing floating moorage.

### **Public Comment**

The comment period for the proposed project ended January 10, 2003 and no comment letters were received. However, Metro generally recommends that to protect the water quality of Lake Union, materials, and construction methods should be used, which prevent toxic materials, petrochemicals, and other pollutants from entering surface water during and after construction. The least toxic wood preservatives that are appropriate for fresh water should be used. Any construction debris floating in the water shall be promptly removed.

## **ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

### **Substantial Development Permit Required**

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: A substantial development permit shall be issued only when the development proposed is consistent with:

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*

*C. The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

**A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58 RCW**

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

**B. THE REGULATIONS OF CHAPTER 23.60**

The regulations of SMC, Section 23.60.064 require that the proposed use(s): 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

**SMC 23.60.004 - Shoreline Policies**

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

The policies support and encourage the establishment of water dependent uses. Floating homes, because of their historic role in Seattle, are designated as a water dependent use, but the increase of floating home moorages or the increase in use of the shoreline or water area by floating

homes, however, is not necessarily encouraged. The intent is to recognize the existing floating home community in Lake Union and Portage Bay, while protecting natural areas, preserving public access to the shoreline, and preventing the displacement of water dependent commercial and manufacturing uses by floating homes. Areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses. The proposal site is located in an area designated as Urban Residential, the purpose of which is to protect residential areas in a manner consistent with the Single-family and Multi-family Residential Area Policies. Therefore, the proposed project would conform to the policies of the comprehensive plan and would be consistent with the purpose of the UR designation.

### Development Standards

The proposal to construct the second floor addition along with the interior alterations of an existing floating home is permitted outright in SMC 23.60.540 governing the UR shoreline environment. The proposed action is therefore subject to:

1. *the general development standards for all shoreline environments (SSMP 23.60.152);*
2. *the development standards for uses in the UR environment (SSMP 23.60.540);*
3. *the development standards for nonconforming floating homes (SSMP 23.60.196); as well as*
4. *the development standards for Single Family zones (SMC 23.44).*

#### 1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

These general standards apply to all uses in the shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity. All shoreline development and uses must: 1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; 2) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and 3) be located, constructed, and operated so as not to be a hazard to public health and safety. The proposed construction of a 155 square foot expansion to the first floor and future 728 square foot second story addition to an existing floating home is consistent with the general standards for development within the shoreline area. General development standards (SSMP 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land or water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. To ensure conformance with the standards in SMC 23.60.157, the proponent will be required to notify contractors and subcontractors of these requirements.

2. Development Standards for UR Shoreline Environments (SSMP 23.60.540)

The development standards set forth in the Urban Residential Shoreline Environment relate to height, lot coverage, view corridors and public access. The subject site, however, is nonconforming and therefore subject to the development standards set forth in the specific floating home standards for nonconforming floating home moorages. Please refer below to the following section.

3. Development Standards for Nonconforming Floating Home Moorages (SSMP 23.60.196)

There are two sets of development standards for floating homes; conforming and nonconforming moorages. The subject moorage is non-conforming. The remodeling, replacement, or rebuilding of a nonconforming floating home moorage is permitted subject to the provisions set forth in SMC 23.60.196C. The floating home moorage is located on privately owned premises (SMC 23.60.196 A2). The existing views of the water from other moorage tenants will not be blocked (SMC 23.60.196.A3). This floating home moorage site is considered pre-existing for the purposes of the Seattle Shoreline Master Program because it has an assigned King County Assessor's (KCA) number (*KCA #276*). The KCA established it as a pre-existing use at the established moorage in Lake Union as of the effective date of this Chapter (SMC 23.60.196.A4). A moorage plan was submitted with this application and is on file with the Department of Design, Construction and Land Use (SMC 23.60.196 A6).

**Nonconforming Floating Home Requirements:**

	<b>Code Provision</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
<b>Float Area</b>	23.60.196.C1.a	Float area shall not be increased.	1,147.5 sq. ft	1,147.5 sq. ft
<b>Height</b>	23.60.196.C1.b	18 feet maximums height from water level	Conforms to Requirement.	18 feet
<b>Setback</b>	23.60.196.C1.c	6 feet minimum distance between subject home and adjacent walls	Exceeds 6 feet from floating homes on east and west side.	Exceeds 6 feet from floating homes on east and west side.
<b>Setback</b>	23.60.196.C1.d	3 feet minimum distance between subject wall and site line	Exceeds 3 feet on all sides.	Exceeds 3 feet on all sides.
<b>Open Water</b>	23.60.196.C1.e	No part of home may be further extended over water, beyond float edge	No portion of the proposed structure extends beyond float edge.	No portion of the proposed structure extends beyond float edge.
<b>Site Area</b>	23.60.196.C1.f	Accessory floats	N/A	No accessory float proposed.
<b>View Corridor</b>	23.60.196.C1.g	Cannot increase view corridor nonconformity	Cannot increase view corridor nonconforming float	Will not increase view corridor nonconforming float

The proposed addition will be constructed on the existing float and will not increase the area of the floating moorage, thereby not increasing the overall coverage for the moorage dock. No additional over water coverage is proposed for this floating home and no part of the floating home will be extended further over water beyond the size of the existing float. The total height of the floating home will continue to be no greater than the maximum 18 feet allowed from the water's surface. All of the proposed setbacks from the adjacent walls and floats satisfy the standards for the nonconforming floating home structures.

The proposed project is consistent with the development standards for nonconforming structures in the UR shoreline environment and does not increase the extent of nonconformity. Therefore, the proposed project is consistent with the standards for the UR shoreline environment.

4. General Development Standards for Single Family Zone Uses (23.44 SMC)

SMC 23.44.008.C states that floating homes shall be subject to the provisions of SMC Chapter 23.60 except they shall be subject to the parking provisions of this chapter. The existing floating homes at this moorage do not have designated required off-street parking spaces because they pre-date code-required parking. Therefore, no off-street parking will be required for this project.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC, sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

Summary

In conclusion, no additional adverse impacts to the lakebed or water quality are expected, and the proposed addition and interior alterations at this moorage site will be consistent with the provisions set forth by *90.58 RCW*, *173-27 WAC*, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP).

**DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

## **ANALYSIS – SEPA**

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated December 5, 2002. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: “Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,” subject to some limitations. Under such limitations/circumstances (SMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### **Construction Noise Impacts**

The SEPA Construction Impacts Policy (Section 25.05.675B SMC) lists mitigation measures for construction noise impacts. It is our conclusion that limiting hours of construction beyond the requirements of the Noise Ordinance is necessary to mitigate impacts that would result from the proposal on surrounding properties, because existing City ordinances do not adequately mitigate such impacts. This is due to the density of residential units in the area and the close proximity of these structures to the proposal site. The proposal is, therefore, conditioned to limit demolition and construction activity to non-holiday weekday hours between 7:30 a.m. and 6:00 p.m. After the structure is enclosed, interior construction may be done at other times with the written approval of the Land Use Planner.

### **Height, Bulk, and Scale**

The total height of the additions to the existing floating home at eighteen feet (18 feet) will be the maximum allowed from the water surface. There is adequate separation between the floating home and the floating homes to the east and west, so solar access to those sites will not be obstructed. The appearance of bulk of the floating home will be reduced by design elements incorporated into the structure. There are a number of existing floating homes in the vicinity of a similar size and scale as the proposal. For these reasons, the proposed floating home at KCA #276 will not be out of scale with other floating homes in the vicinity, and no adverse impacts are expected related to bulk and scale.

### Water Quality Impacts

No disturbance of the lakebed sediments is expected since all work will be done above water. There is the potential for debris to enter the water during demolition and construction, so care will have to be taken to prevent this from occurring. In addition to the requirements set forth by 23.60.152 SMC, Metro's recommendations to protect the water quality for Lake Union shall also be followed as conditioned below.

### Conclusion

In conclusion, the proposed new addition to the floating home on the existing float will be consistent with the provisions of Chapter 23.60 SMC, also known as the Seattle Shoreline Master Program.

### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

### **SEPA AND SHORELINE CONDITIONS**

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DCLU. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

#### Prior to Issuance of a Construction Permit

1. The owner(s) and/or responsible party(ies) shall notify in writing all contractors and sub-contractors of the general requirements of the following conditions. The owner(s) and/or responsible party(ies) shall be subject to the following:



a) The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards, and regulations of water quality management programs and regulatory agencies.

b) Best Management Practices shall be employed during the proposed over-water work as necessary to keep debris and deleterious material out of the water. The contractor shall include on the plans a written description of the BMPs that will be used during the proposed work, including the following:

- A containment boom shall be deployed during the work to contain any debris that drops in the water during construction.
- The boom shall be placed along the perimeter of the floating home before the proposed work begins. The boom shall be removed at the end of each day and then reinstalled before work begins the following day.
- If any deleterious material enters the water during the proposed work this material should be removed immediately, stored on site and then disposed of in the appropriate upland facility.
- If heavy (sinking) debris enters the water during the demolition work the location of the debris should be documented in a log to be kept through the duration of the project. When construction is complete a diver should retrieve all debris that has entered the water and sunk during the demolition work.

c) Provide on plan sets an emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material should be stocked on the site. A sufficient number of personnel during construction shall be trained in the proper implementation of this plan.

#### During Construction

2. In order to further mitigate the noise impacts during demolition and construction, the owner(s) and/or responsible party(s) shall limit the hours of demolition and construction to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. This condition may be modified by the Department to permit work of an emergency nature or to allow low noise interior work after the shells of the structure are enclosed. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.
3. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction and to remove debris promptly if it does enter the water.
4. Equipment using oil, gasoline, diesel or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water. If there is any evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

5. If treated wood is proposed this wood shall be professionally treated and completely cured using the best management practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
6. The use of wood treated with creosote or pentachlorophenol is prohibited.

Signature: \_\_\_\_\_ (signature on file) Date: July 28, 2003  
Malli Anderson, Land Use Planner  
Department of Design, Construction and Land use

MJA:bg

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